IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/04/2004

CORAM

THE HONOURABLE MR.JUSTICE C.NAGAPPAN

WRIT PETITION NO.15287 OF 1997

1. P.N.S.Gopinath
2. P.N.Suruluvelu
3. Sheela Devi
4. Veni
5. Chinnammal
6. Ammaluammal
7. Ponnuraj
8. Vasagan
9. Subramanian
10.Kalia Gounder @
Subramanian ... Petitioners

-Vs-

1. The District Collector,
Theni.

2. The Revenue Divisional Officer,
Periyakulam.

3. The Tahsildar, Andipatti.

4. Varashanadu Panchayat Board,
through its President at
Varashanadu.

5. K.Mayiladumparai Panchayat Union
through its Chairman ... Respondents

Writ Petition under Article 226 of the Constitution of India
praying for issuance of a writ of certiorari as stated therein.

!For Petitioners .. Mr. T.Srinivasaraghavan

^For Respondents .. Mr.S.V.Durai Solaimalai,
Government Advocate, RR1 to 3
Mr.S.Vijayakumar for
Mr.G.Sankaran for RR4 & 5

:ORDER

The petitioners have sought for issuance of writ of certiorari to quash the proceedings of the second respondent in Roc.No.A4/2476/97, dated 27.09.1997.

2. According to the petitioners, the land comprised in Survey No.55 0, Mayiladumparai Village, Andipatti Taluk, is classified as Panchamthangi Kanmai Poramboke in the revenue records and the ancestors of the petitioners, about 40 years ago, planted silk cotton, coconut, Tamarind, Mango, Jack Fruit and Naval trees on the poramboke land and cultivated them. It is further stated by the petitioners that the Government issued 'B' Memos to the petitioners and collected penal assessment from them. The petitioners have further stated that they applied to the third respondent for issuance of 2C Patta in their names in respect of the trees and the Special Officer of the 4th respondent Panchayat Board passed a Resolution, dated 03.09.1996, recommending the issue of 2C patta to the petitioners and the third respondent also made a spot inspection and passed an order, dated 05.12.199 6, issuing 2C Patta to the petitioners with regard to the trees and the same was recorded in 2C Register. It is further stated by the petitioners that the second respondent, by order dated 27.09.1997, made in Roc.No.A4/2476/97, cancelled the 2C patta granted by the third respondent to the petitioners.
According to the petitioners, the impugned order has been passed without notice to them and without giving them opportunity in violation of the principles of natural justice and liable to be quashed. It is further stated by the petitioners that grant of 2C Patta is not merely a licence simplicitor, but coupled with an interest in the property and therefore it cannot be revoked. The petitioners have further stated that they are not members of one family as alleged in the impugned order and it is based on mistake of fact and liable to be set aside.

3. The first respondent has filed a detailed counter in which it is stated that the Government in G.O.(Permanent) No.705, dated 19.06.19 92, has issued certain instructions fixing the ceiling in issuing 2 C Pattas to one family to 5 tamarind trees or 25 coconut trees or 50 palm trees, etc. and without adhering to the above instructions, the 4 th respondent panchayat passed a resolution stating no objection to grant of 2C pattas to the petitioners and based on the resolution, the third respondent, namely Tahsildar, has granted 2C pattas to the petitioners.
It is further stated in the counter that the Panchayat Resolution was passed by the Panchayat Union Commissioner, in the capacity of Special Officer and that was cancelled by the first respondent in his proceedings, dated 29.05.1997, on the ground that the Divisional Development Officer (Panchayat) was the competent authority to pass a resolution of no objection as per the Panchayat Act. The first respondent has further stated in the counter that following the cancellation of the Panchayat Resolution, the second respondent in his proceedings Roc.No.A4/2476/97, dated 27.09.1997, cancelled the 2C patta issued by the Tahsildar, on 05.12.1996. It is further stated in the counter that 2C patta granted by the third respondent is against the instructions issued in G.O.Ms.No.705, dated 19.06.1992 and hence the order granting 2C Patta is not legal. The first respondent has further stated in the counter that the action of the third respondent is prima facie wrong and

hence it is not necessary to give opportunity to petitioners and the grant of 2C Patta is not a irrevocable licence.

4. No counter has been filed by 4th and 5th respondents.

5. Heard the learned counsel for the petitioners, learned Government Advocate for Respondents 1 to 3 and the learned counsel for Respondents 4 and 5.

6. The second respondent has stated two reasons in the impugned order for cancellation of 2C patta granted by the third respondent. The first one being that the order issued by the Tahsildar, granting 2C Patta, is contrary to Government instructions issued in G.O.( Permanent) No.705, Revenue Department, dated 19.06.1992 and the other being that the resolution of no objection passed by the 4th respondent panchayat is without jurisdiction and it was ordered to be cancelled by the first respondent.

7. Learned counsel for the petitioners contends that the petitioners are not members of one family and the Government instructions issued in G.O.(permanent) No.705, dated 19.06.1992, is not applicable to the order of the third respondent granting 2C Patta and the impugned order has been passed in violation of the principles of natural justice without notice to the petitioners and without giving them opportunity to explain and hence it is liable to be quashed. The learned counsel further contends that the impugned order had to be made in consonance with the rules of natural justice when it affected the rights of the petitioners to property and to substantiate the contention, the counsel relies on the decision of the Apex Court in The D.F.O., South Kheri & Others vs. Ram Sanehi Singh, reported in AIR 1973 SC 205 . Their Lordships of the Apex Court, while considering the Administrative Order of the Divisional Forest Officer, have laid down as follows.

"5. It is unnecessary to consider whether the order of the Divisional Forest Officer is made on 'irrelevant grounds' because it is clear that before passing the order the Divisional Forest Officer did not call for any explanation of the respondent, and gave him no hearing before passing the order. It is averred in paragraph-22(i) of the petition that the "cancellation order is in violation of the principles of natural justice having been done at a very late stage without affording any opportunity to the petitioner (respondent) to say anything against the action cancelling his tallies". To that averment, no reply was made by the forest authorities against whom the petition was filed. Granting that the order was administrative and not quasijudicial, the order had still to be made in a manner consonant with the rules of natural justice when it affected the respondent's rights to property. This Court in the case of State of Orissa v. Dr. (Miss) Binapani Dei, AIR 1967 SC 1269, held in dealing with an administrative order that "the rule that a party to whose prejudice the order is intended to be passed is entitled to a hearing applied alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers". The Divisional Forest Officer in the present case set aside the proceeding of a subordinate

authority and passed an order which involved the respondent in considerable loss. The order involved civil consequences. Without considering whether the order of the Divisional Forest Officer was vitiated because of irrelevant considerations, the order must be set aside on the simple ground that it was passed contrary to the basic rules of natural justice." (emphasis supplied)

8. The other decision relied on by the learned counsel is Lakshmi Ammal and another vs. The Board of Revenue, Madras  (1965 -II Madras Law Journal Reports 95), in which a learned Judge of this Court held that where a quasi-judicial Order does not consider the applicability of the relevant Government Order issued in that regard and the affected party is not given adequate opportunity to put forth his contention, the order is liable to be quashed.

9. It is true that the petitioners have been granted 2C Patta with conditions attached to it. It is not the case of the respondents that the cancellation was made on account of alleged violation of any of those conditions. The third respondent, namely Tahsildar, is empowered to grant 2C Patta. But what is alleged against him is that he had passed the order granting 2C Patta without taking into account the instructions contained in G.O.Ms.No.705, dated 19.06.1992. The instructions in the above Government Order relate to fixation of ceiling in the event of issue of 2C Patta to one family. According to the petitioners, they are not members of one family and the Government Order itself is not applicable to the order granting 2C patta to them. In the counter, the first respondent has stated that petitioners 1 , 2 and 4 belong to one family and petitioners 3 and 5 belong to another family. There are ten petitioners in this petition and in that context, the applicability of the Government Order in question to the order granting 2C Patta to the petitioners has to be determined. Admittedly, the second respondent did not give any notice to the petitioners and the petitioners have not been provided with any opportunity to explain the position before the passing of the impugned order affecting their right to property.

10. The law is well settled that a quasi judicial or administrative order has to be made in a manner consonant with the rules of natural justice when it affects the right of party to the property. The impugned order has been passed in violation of the principles of natural justice and the entire proceedings are liable to be quashed. The petitioners are entitled to the relief sought for in the writ petition.

11. The writ petition is allowed as prayed for. No costs. However, it is open to the authorities to proceed afresh, in accordance with law.

Index:yes.
Internet:yes.
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To:
1. The District Collector,

Theni.

2. The Revenue Divisional Officer,
Periyakulam.

3. The Tahsildar, Andipatti.